

MINUTES
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, March 15, 2004, at 9:00 a.m.
State Capitol Building, Room 303

PRESENT: Governor Judy Martz, Superintendent of Public Instruction Linda McCulloch, and Secretary of State Bob Brown

ABSENT: State Auditor John Morrison and Attorney General Mike McGrath

Motion was made by Ms. McCulloch to approve the minutes from the regularly scheduled meeting of the Board of Land Commissioners held February 17, 2004. Seconded by Mr. Brown. Motion carried unanimously.

BUSINESS TO BE CONSIDERED

304-1 WILLIAMS HOMESITE SALE

This item has come before the Board twice, first for preliminary approval and then in 2002 for final approval to proceed. Since that time, the department has completed the appraisal and all the necessary surveying, analysis, and advertisements. The sale was conducted on February 13, 2004. The Williams' were the only bidder, and they have presented the department with the 10% sale price bond amount. Mr. Clinch requested approval.

Motion was made by Mr. Brown to approve the homesite sale. Seconded by Ms. McCulloch. Motion carried unanimously.

304-2 BLACKFOOT-CLEARWATER WILDLIFE MANAGEMENT
CONSERVATION
EASEMENT

This request comes cooperatively from the Department of Natural Resources and Conservation (DNRC) and the Department of Fish, Wildlife, and Parks (FWP). There has been several other items brought before the Board regarding the Blackfoot-Clearwater Wildlife Management Area (WMA) over the last several years. Mr. Clinch said this request today is the final action in regard to the activities undertaken to ensure properties and management scenarios within the boundaries of the Blackfoot-Clearwater WMA are consistent with DNRC's trust responsibilities and consistent with the management of that property as a game range. Of importance, is the sale of a conservation easement which delineates the management strategy, or limitations, on

MINUTES
March 15, 2004
BOARD OF LAND COMMISSIONERS
Page 2

6,849 acres of trust land. Those management activities have been negotiated between the two departments, and for the purchase price of \$1,598,965, the DNRC is agreeing to forego certain management activities. The traditional activities of timber harvest will be allowed to continue as well as other activities that don't affect the management of the properties as a wildlife management area. In this process, the necessary public involvement, scoping, and MEPA compliance were completed.

Jeff Hagener, Director, Montana FWP, said Mr. Clinch gave a good overview of this project. It has been in the works for several years, and we've come up with a good solution. This is a significant amount of property amongst the Clearwater-Blackfoot WMA. We looked at a long term lease agreement whereby FWP would compensate the trust for certain restrictions on that property. When the legislature passed the allowance for the sale of conservation easements of this nature, it fit very well with FWP's Habitat Montana Program, where the funding is coming from, and we think it is an ideal situation. Mr. Hagener urged the Board's approval.

Tom Schultz, DNRC, said this is a tremendous example of agencies working together. He said FWP, as the agency responsible for managing the state's fish and wildlife populations, is doing a good job of upholding their responsibilities. DNRC has done a great job of trying to maintain its trust responsibilities. There was a lot of negotiation back and forth in terms of what would be covered and what wouldn't, and the cost in the easements. Staff from both agencies worked long hours, and there has been a lot of interaction and hard work. It provides conservation values for the game range and at the same time shows that on trust land we can be viewed as providing those conservation opportunities and being compensated for it. There are many opportunities out there that affords us a chance to continue to do this type of activity on the ground or to maintain the traditional resource activities, whether it be timber harvest, grazing, or mining, while at the same time providing conservation values and precluding subdivision, which is what the intent of this project is. We can limit the development rights of the state parcel while maintaining those traditional industries. This was a great opportunity for two agencies to work together and it is a great opportunity for the State of Montana to protect the game range and continue to manage it in a reasonable way.

Motion was made by Ms. McCulloch to approve the conservation easement. Seconded by Mr. Brown. Motion carried unanimously.

304-3 OIL AND GAS LEASE SALE (Held March 2, 2004)

The department held its quarterly oil and gas lease sale on March 2, 2004. One hundred seven tracts were competitively bid, collectively yielding \$315,717. Mr. Clinch said of those tracts, we had one high bid tract that brought \$265/acre on a 320-acre tract. That tract alone brought a bid bonus of \$85,000. Mr. Clinch stated it is nice to

MINUTES
March 15, 2004
BOARD OF LAND COMMISSIONERS
Page 3

see that vigorous action in the bidding process. Mr. Clinch requested approval by the Board of the March 2, 2004, oil and gas lease sale.

Motion was made by Mr. Brown to approve the sale. Seconded by Ms. McCulloch. Motion carried unanimously.

304-4 UPPER McKILLOP TIMBER SALE

This proposed timber sale is located 25 air miles southeast of Libby, midway between Kalispell and Libby, north of Highway 2. Mr. Clinch said the sale proposes to harvest across 544 acres, yielding 21,000 tons of sawlogs, which converts to about 3 million board feet. The purpose of the sale is to establish vigorous healthy stands by managing various disease and insect infestations and returning the stand to a more historical composition. There will be a little bit of new road construction, about ½ mile, and some upgrades on 3.93 miles of existing roads. In the review of this sale and in the MEPA process, we solicited public comment through newspapers, known interested parties and agencies. Those comments were used to develop mitigation and alternatives. The conclusion of the MEPA document is that no significant environmental impacts will result because of this harvest operation. It is the department's anticipation that this volume in today's market will yield about \$437,000 in revenue to the trust. In addition, there is a \$9.30/ton Forest Improvement Fee. Mr. Clinch requested approval of the Upper McKillop Timber Sale.

Motion was made by Ms. McCulloch to approve the timber sale. Seconded by Mr. Brown. Motion carried unanimously.

304-5 SETTLEMENT AGREEMENT – JOHNSTON V. STATE OF MONTANA

The department is asking for Board approval to enter into a settlement agreement with Mr. Johnston. This case evolved because of a conflict over a previous road easement the department issued, and over the current status of that road in terms of whether it is an abandoned county road or whether it is still a county road. The Plaintiffs are owners of land adjacent to state land and they, by way of ownership, had an assignment of easement across state land that authorized minimum access across that land. In discussion with them, and in the department's subsequent analysis, it was revealed that should the Plaintiffs choose to pursue litigation they may prevail in determining that this road across state land has never been officially abandoned as a county road and, consequently, it remains open and unrestricted. After intense discussion between the Johnston's and the department in terms of what either party would like to see happen in road access management, we came to the conclusion that the best way to solve this dispute is to enter into a settlement agreement that lays out specific stipulations about

MINUTES
March 15, 2004
BOARD OF LAND COMMISSIONERS
Page 4

who is authorized to use this road and under what conditions. Mr. Clinch requested authority from the Board to enter into the settlement agreement.

Tommy Butler, DNRC legal counsel, said Mr. Clinch summarized this agreement very well, there is dispute about the Old Alhambra Road. Mr. Butler displayed maps showing the location of the road and the state land. He said the Old Alhambra Road is adjacent to the interstate highway, the surface lessee is Mr. Gruber. As Mr. Clinch explained, this agreement has three components. It will resolve, between the members of the Rosewood Estates Subdivision and the department, the status of the Old Alhambra Road running across Section 16. There is a problem in that the department cannot use its own road to reach a timber sale on Section 16, so a reciprocal easement being given here. The department will give an easement to the individual members who choose to participate in this settlement agreement across Section 16. In return, Rosewood Estates Subdivision will give the state an easement across a portion of its land so we can reach our timber sale and remove the timber. The third component of this agreement is that it resolves, at least between the parties, the status of this road being a public road or a private road. They are giving up their rights to assert any public nature of this road. Subsequently, this settlement agreement, should the Board approve it, will be submitted to the Jefferson County Commissioners for review and approval. And ultimately, it will go to Judge Tucker who is overseeing this case. The authority the department is asking from the Board is to approve the settlement agreement in substantially the same form as has been set out here. There might be a small amount of "tweaking" for property descriptions that may occur later on depending upon surveys.

Motion was made by Mr. Brown to approve the settlement agreement. Seconded by Ms. McCulloch. Motion carried unanimously.

MINUTES
March 15, 2004
BOARD OF LAND COMMISSIONERS
Page 5

304-6 RIGHTS-OF-WAY APPLICATIONS

This month there are 31 applications for rights-of way, and one reciprocal access agreement. Number 12328 is from Wibaux County for highway maintenance; #12329 is from Gordon Cattle Company for a private access road (existing); #12330, 12331, 12332, 12333, and 12334 are from Central Montana Communications for buried telephone communications cables; #12335, 12336, 12337, 12338, 12339, 12340, 12341, 12342, 12343, 12344, 12345, 12346, 12347, 12348, 12349, 12350, 12351, 12352, 12353, 12354, 12355, and 12356 are from Hill County Electric Co-op for overhead utility distribution lines; #12357 is from Eugene McFerran for a private access road (existing); #12358 is from Williston Basin Interstate Pipeline Company for a buried 12" natural gas pipeline; and #12359 is a reciprocal access agreement between the State of Montana and Robert DeArmond for a right-of-way for a perpetual non-exclusive easement for private access road. Mr. Clinch asked for approval of the entire packet.

Motion was made by Ms. McCulloch to approve the rights-of-way application package. Seconded by Mr. Brown. Motion carried unanimously.

Governor Martz thanked the two departments, FWP and DNRC, for working together and bringing the items to the Board in such a completed manner. She spoke to the audience and said these issues are discussed before the formal meeting so it seems like we go through these quickly, but we have read these through and understand the issues when the Board convenes. It enables the Board to act quickly, by no accident, because of the credibility of the department bringing forth these issues. She thanked the department for its work.

PUBLIC COMMENT

None at this meeting.

Motion was made by Mr. Brown to adjourn. Seconded by Ms. McCulloch. Meeting adjourned.